

Pinehurst Village Station  
Pinehurst, North Carolina

Docket No. A2011-49

MOTION FOR LATE ACCEPTANCE AND  
RESPONSE TO USPS COMMENTS

(October 27, 2011)

Petitioners move for a one-day extension of time to file these responses to the comments of the Postal Service. Its repeated attempts to have the filing on-line system accept the filing that we attempted prior to the October 26, 2011, deadline were rejected by the automated software. With the assistance of the Commission's docket section, we have resolved these technical problems.

The Postal Service comments filed on October 12, 2011, include a long list of alleged procedural bars and technical disqualifications that supposedly preclude the Commission from considering the petitioners' arguments on the merits against closing the Pinehurst Village Post Office. All of these arguments depend on the validity of the Postal Service's conclusion that the Randolph Amendment [that was codified as 39 U.S.C. 404(d)] did not intend to extend appeal rights to the closing of stations or branches.

The petitioners filed a motion to suspend the decision to close Pinehurst Station on October 7, 2011. The attachment to that motion analyzes the text and the legislative history of the Randolph Amendment. It shows that an equally plausible case can be made that the Randolph Amendment meant to extend appeal rights to stations and branches. The Commission's proposed new rules governing small post office closings are based on the same conclusion regarding the coverage of the Randolph Amendment. If the Randolph Amendment does, in fact, extend appeal rights to stations and branches, then the Postal Service's decision to close Pinehurst Village Post Office

was not preceded by the kind of notice that the Commission has determined such rights require, the “administrative record” that the Postal Service has compiled is not one that has been legitimized by adequate notice, and the Postal Service did not make the substantive showings the section 404(d) requires of the Postal Service.

In considering its decision to close historic Pinehurst station, it is clear that the Postal Service has violated the provisions of the National Historic Preservation Act, Public Law 89-665, 16 U.S.C. 470. If the Postal Regulatory Commission ignores this issue as well, that too would constitute a violation of the National Historic Preservation Act. Pinehurst Village Post Office has been the cultural and business center of the village for over a century and is the main magnet that draws residents to the village center. We have been informed by USPS officials in Charlotte and Washington, and by the historical authorities, that this is the only National Landmark District post office, and it’s the only one ever to be proposed for closure. Section 106 of the Act requires careful weighing of the cultural and historic, as well as economic, impacts on the village and this was not done.

The argument in the USPS response that it is somehow exempt from this requirement and that the Commission has no jurisdiction to consider this issue are manifestly incorrect. Section 404(d)(2)(A)(i) requires the Postal Service to consider “the effect of such closing or consolidation on the community served by such post office.” How could it do this without considering whether closing Pinehurst’s post office would harm the unique historical value to the Pinehurst community that landmark designation of its functioning post office represents? It is astounding that the Postal Service considers this issue to be irrelevant to the finding that is required under section 404(d)(2)(A)(i). It is equally astounding that the Postal Service thinks that the Commission has no basis for reviewing the adequacy of this finding.

The Postal Service failed to consult with the Pinehurst Historical Commission, the NC State Historical Protection Office, the National Park Service, or with the President’s Advisory Commission on Historic Preservation, as required by the National Historic Preservation Act. As these organizations can confirm, they have been brushed aside by the Postal Service, and, as a result, their efforts to arrange cooperative consultations have failed. Willful and knowing violations of this legal obligation under the NHPA can

only serve to undermine the objectives of this law and thus hamper the oversight of the President's Advisory Commission. Both the Postal Regulatory Commission and USPS are obligated to ensure that closure is consistent with all applicable Federal law. The Commission should suspend the Postal Service's closure decision until this law is complied with and the historical considerations receive proper weight in the Postal Service's section 404(d)(2)(A)(i) findings.

The Postal Service has responded to complaints from business owners about the damage closure would cause by repeating its bald assertion that "there would be no impact on the business district". This is disingenuous to say the least. The Postal Service used this rote response to all complaints from Pinehurst business owners, no matter how varied their concerns and arguments. It is already clear that the closing of Pinehurst station is having a devastating impact on Pinehurst's small business district" (See unredacted responses in the Postal Service's submission of the administrative record). Most businesses have documented and quantified significant losses to their normal cash flow and operations resulting from the abrupt loss of foot traffic in the town center that immediately followed the closing of Pinehurst station. For the Postal Service to dismiss these actual results by saying they cannot be recognized because they occurred after closure is to defy common sense. If actual results would have had to occur before closing, then there could never be any damages from USPS closure decisions. As our brief shows, virtually all businesses in the business district have now written to petitioners to join in support of their appeal and urge suspension of the Postal Service's decision.

As Petitioners have shown in their Brief and related Motion for an Order of suspension, the analysis of savings on which the Postal Service's decision to close is based is in gross error because of the key financial factors that it has ignored. Each former Pinehurst box holder that opts for home delivery causes a net revenue loss to the Postal Service, since it loses box rental revenue (averaging \$100 per year) and incurs the additional cost of curbside delivery (averaging \$225 per year). Our informal survey of the community indicates that roughly 1,000 former patrons of Pinehurst station have chosen to trade rented boxes for curbside delivery. That represents an annual per-patron loss of \$325. It the Postal Service's estimate that \$66,000 in salary and

facility costs would be saved each year by closing Pinehurst station is correct, the net revenue loss for former box holder who opts for curbside delivery (beyond the approximately 1,000 former Pinehurst patrons who have already made this choice) would be  $\$325-66 = \$ 259$ .  $\times 1,000 = - \$259,000$ . Not only is there no savings from this decision to close, there is a substantial net loss. It can readily be seen that closing the Pinehurst Village Post Office does not fit within the stated objectives of the USPS closure program. It is a profitable busy station with a unique historical designation and as such its reopening would in no sense undermine the USPS closure program.

Suspending the decision to close Pinehurst station would impose only a minor burden on the Postal Service. Historic Pinehurst station is owned by the Postal Service. Reopening it would not involve a lease that would have to be re-instated. Contrary to the assertion in the response, all boxes and service window facilities have remained in place and the only employee has been relocated just two miles away. . Reopening would require little more than having former staff turn the lights back on and remove the padlock from the front door.

In summary, the USPS response amounts to little more than 1) a boiler plate recitation that closing Pinehurst station would save money, without even addressing our detailed analysis of the financial effects that it ignored, 2) a boilerplate response that closing Pinehurst station would have no adverse impact on Pinehurst businesses, waiving aside the fact that nearly every business in the Pinehurst business district provided detailed factual statements to the contrary, and 3) an assertion that closing Pinehurst would not have an adverse impact on the Pinehurst community, as though it had never been designated an Historic Landmark . It is incumbent on the Postal Regulatory Commission to let the Postal Service know that it needs to do better. The only way to send the Postal Service this message is to set aside its findings on these three issues and remand the decision to close Pinehurst station.

**By the Petitioners,**

**John and Bettye Marcum**